

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

MALLINCKRODT INC.¹

Employer

and

**Cases 3-RC-11640
3-RC-11641**

**TEAMSTERS LOCAL #693,
INTERNATIONAL BROTHERHOOD OF TEAMSTERS**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon petitions duly filed under Section 9(c) of the National Labor Relations Act, as amended, (“Act”), a hearing was held before a hearing officer of the National Labor Relations Board (“Board”).

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, I find:

The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Mallinckrodt Inc. (“Employer”) is a Delaware corporation with places of business located at 72 Railroad Avenue, Hobart, New York and at 244 River Street, Oneonta, New York,² where it produces dosage pharmaceuticals. The parties stipulated that during the past twelve months, in the course and conduct of its business, the Employer purchased and received at its Hobart, New York facility, goods and materials valued in excess of \$50,000 directly from points located outside the State of New York. Based on the parties’ stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The parties stipulated, and I find, that Teamsters Local #693, International Brotherhood of Teamsters (“Petitioner”) is a labor organization within the meaning of Section 2(5) of the Act.

¹ The Employer’s name appears as amended at the hearing.

A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

The Petitioner seeks to represent two separate bargaining units, one comprised of all full-time and regular part-time production employees and the other comprised of warehouse employees.³ The Petitioner contends that the production and warehouse employees do not share a sufficient community of interest for inclusion in the same unit. However, the Employer contends that the two groups of employees do share a community of interest, which they also share with all other hourly employees. The Employer, therefore, maintains that the only appropriate is one unit comprised of all full-time and regular part-time hourly employees. Specifically, the Employer seeks to include in one unit the production and warehouse employees as well as maintenance, housekeeping, packaging and distribution center employees.⁴

The parties stipulated that the following full-time and regular part-time production job classifications should be included in any unit found appropriate herein (the approximate number of employees in each classification is noted in parenthesis): dispensing technician 1 (9), dispensing technician 2 (7), blending technician 1 (21), blending technician 2 (17), blending technician 3 (10), coating technician 1 (0), coating technician 2 (1), team leader coating technician (1); encapsulating press operator 1 (0), encapsulating press operator 2 (0), encapsulating press operator 3 (3), tablet press operator 1 (34), tablet press operator 2 (19), tablet press operator 3 (12), manufacturing assistant (8), inspector (9), high volume plant technician (4), ovens screening technician (0), team leader (blending),⁵ team leader (dispensing), team leader (tableting and encapsulating), and machine setup technician (7). I find, based on the parties' stipulation and the record as a

² The Employer's River Street facility is a warehouse where packaging materials are stored.

³ There are approximately 150 employees in the Petitioner's proposed unit of production employees and approximately 12 employees in the warehouse unit.

⁴ The Employer would include the following job classifications (the approximate number of employees is noted in parenthesis): in housekeeping, in a single unit of all hourly employees, the job classifications of janitor (9) and lead custodian (3); in packaging, the job classifications of packaging line operator 1 (88), packaging line operator 2 (43), packaging line operator 3 (23), packaging team leader (25); in maintenance, the job classifications of maintenance mechanic I (7), maintenance mechanic II (6), maintenance mechanic III (7) and maintenance mechanic IV (5); in the distribution center, the job classification of distribution technician (11) and driver (1). The Employer also seeks to include the process trainer (3), and equipment manual developer (3). There are approximately 420 employees in the Employer's proposed unit.

⁵ The record did not disclose the specific number of team leaders in blending, dispensing, tableting and encapsulating. Rather it disclosed that in all four areas combined there are 11 team leaders.

whole, that the employees in these production job classifications share a community of interest warranting their inclusion in the appropriate unit, as discussed herein.

The parties further stipulated that any unit found appropriate herein that includes warehouse employees should include the following job classifications (the approximate number of employees is noted in parenthesis): all full-time and regular part-time materials coordinator 1 (3), materials coordinator 2 (8) and material coordinator senior (2) at the Employer's facilities in Hobart and Oneonta, New York. I find, based on the parties' stipulation and the record as a whole, that the employees in these warehouse job classifications share a community of interest warranting their inclusion in the appropriate unit, as discussed herein.

The parties also stipulated that the following job classifications should be excluded from any unit found appropriate herein: all office clerical employees, guards, and professional employees and supervisors within the meaning of the Act.

Based on the evidence adduced during the hearing and the relevant case law, I conclude that each of the petitioned-for units is an appropriate unit, as modified herein, and thus will direct an election in separate production and warehouse units. I further find that the packaging employees should be included in the production unit found appropriate herein, as they share a community of interest with the petitioned-for production employees. The petitioned-for warehouse unit is an appropriate unit as the employees share a community of interest that is separate and distinct from the production employees. I further find that the distribution technicians and driver, should be included in the warehouse unit found appropriate herein, as they share a community of interest with the petitioned-for warehouse employees. I also conclude that the housekeeping and maintenance employees are to be excluded from the units as they do not share a sufficient community with employees to be included in either the warehouse or production units.⁶

⁶ As more fully explained below, the process trainers will be permitted to vote in the production unit election directed herein subject to challenge by the parties.

FACTS

The Employer manufactures dosage pharmaceuticals. In this process, various ingredients are combined to create different medications that are put into tablet, capsule or liquid forms. The Employer primarily produces methadone as well as other pharmaceuticals. These products are manufactured in a multi-step process that is governed by the product's batch record, which contains a set of instructions for making the product. By following these instructions, the required ingredients are first measured, and then blended. Thereafter, the blended product is manufactured into its final form, a tablet, capsule or liquid. The product is then packaged. The process, and actual materials and procedures used in making the product are documented in the batch record. At each stage of the process, employees follow a set of standard operating procedures ("SOP") for the tasks they are performing.

Physical Layout

The manufacturing process is conducted at the Employer's campus in Hobart, New York. There are four main buildings on the campus. Buildings labeled 1, 16 and the distribution center are physically separate from the complex of attached buildings labeled 12, 12A, 12B and 12C. The primary production activity occurs in the building 12 complex. The pertinent areas in this complex are 12A (production), 12C (packaging), 12B (warehouse) and 12 (production). On the upper level of 12A there are a series of corridors and located off these corridors are suites in which ingredients are dispensed, blended and formed into tablets or capsules. There are also offices located in 12A as well as the main cafeteria. Area 12 contains the high-speed operation. 12B contains a warehouse area. The 12C area contains a packaging operation. Adjacent and to the north of 12C is the distribution center, which has a separate entrance. The finished product is stored in the distribution center prior to shipping. Building 16, which is about 200 yards away from the building 12 complex and to the north, contains a packaging operation, liquid blending and a warehouse area. Building 1, which is located southeast of the building 12 complex, contains a health clinic, a limited blending operation, a group that is responsible for contract manufacturing, customer service and a small maintenance shop.

Dispensing

The first step in manufacturing the product is dispensing. In this process, the ingredients are measured by 16 dispensing technicians, who are classified as 1, 2 or team leader.⁷ The dispensing technicians work in suites located on the upper level of 12A.⁸ The dispensing technicians' use ingredients that are retrieved from the 12B warehouse area by the manufacturing assistants.⁹ These manufacturing assistants are assigned to work in dispensing. The technicians measure the ingredients while wearing protective equipment.¹⁰ The type and amount of ingredients they use is based on the product's batch record. The technicians measure the correct amount of ingredients by using scales. In performing these tasks, the technicians verify their procedures and document them in the batch record. The manufacturing assistants also aid in performing the necessary record keeping.

The dispensing technicians and their manufacturing assistants are directly supervised by supervisors Ray Moser, Stan Suchy or Sam May. The technicians and assistants receive their work assignments from these supervisors. The supervisors have a general office in the dispensing area that is also used by the assistants. There are similar offices in each of functional areas of blending, compression and packaging. The supervisors report to superintendent John Udicious. Udicious is the superintendent for dispensing, blending, bead coating and inspection. Udicious reports to production manager Mike Mullins. Mullins reports to plant manager James Walter.

Blending

The measured ingredients are blended by the technicians, in accordance with the batch instructions. The blending technicians are classified as 1, 2 or 3. There are approximately 48 blending technicians, who primarily work in suites located on the upper level of building 12A. The technicians in this area essentially

⁷ The higher classification is a designation based upon the amount of time spent in the job and the skills acquired. The record was silent as to how many team leaders there are in dispensing. The record did disclose that in dispensing, blending, and compression combined, there are 11 team leaders.

⁸ The dispensing suites are located on the same level as the 12B warehouse area. The dispensing technicians as well as blending, compression and packaging employees work in suites to prevent cross contamination with other products.

⁹ The record disclosed that there are eight manufacturing assistants and that each one is assigned to a specific department, but it does not specify the number assigned to each department.

¹⁰ The technicians wear portable air powered respirators, overpants, a smock, surgical gloves, safety shoes, booties to cover their shoes and two hair nets.

take the measured ingredients and load them into blending equipment.¹¹ In so doing, they wear the same protective equipment as the other technicians. Several different types of blending equipment are used to blend the product.¹² Once blended, the product may need to be milled or pulverized to obtain the proper consistency. In performing these duties, the blending operators work in two-person teams, with one operator performing the required tasks and the other checking to ensure that the tasks were properly performed.¹³ After blending, the manufacturing assistants help move the blended product to the next stage of the process or to storage in the 12B warehouse.

Approximately six of the blending technicians are assigned to the liquid line, which is located in building 16. Two blending technicians are needed to run the liquid line. In running the liquid line, these technicians follow a different process than the other technicians. The liquid products, due to concerns regarding microbiological contamination, are immediately packaged after blending. In this process, the ingredients are dispensed directly to the line, blended in a 4,000 liter liquid tank and pumped to a filling device. The filling device drops down the tubes which are filled with liquid. The liquid line manufactures products such as a methadone liquid, hydrocodone with acetaminophen, morphine liquid as well as a medication for epilepsy. About twice per month, the liquid line is shut down for a day. At such times, the blending technicians work on the packaging line that is also located in building 16.

Another blending process is performed by coating technicians, who are classified as 1, 2 or team leader.¹⁴ Their work is primarily performed in building 1. The technicians load small beads of sugar into a large cylindrical piece of equipment. The active pharmaceutical ingredient then is sprayed onto the beads.

¹¹ Several different types of blending equipment are used to blend the product depending on the batch instructions. One piece of equipment resembles a large V, which is formed by the two cylinders that range in size from 10 to 150 cubic feet. Another piece of blending equipment is shaped like a deep bathtub. A third piece of equipment resembles a large household blender and after a liquid is added it is moved by the technicians to an oven in order to dry the product. This job may also be performed by an ovens screening technician, who the parties stipulated should be included in any unit found appropriate herein. However, there are currently no employees that hold the position of ovens screening technician. Therefore, this task is currently also performed by the blending technicians. The last type of equipment used in blending is for the liquid line; this equipment immediately packages the product after blending.

¹² This job may also be performed by an ovens screening technician, which the parties stipulated should be included in any unit found appropriate herein. However, as previously noted, there are currently no employees that hold the job classification of ovens screening technician. Therefore, this task is currently performed by the blending technicians.

¹³ Due to the size of some of the machines used in blending, at times the operators will wear a safety harness as they work on the machine from a certain height. The harnesses are also used by maintenance technicians and material coordinators when they are working above ground level.

The coated beads are then transported to the building 12 blending area where they are mixed with other coated beads by the blending technicians.¹⁵

In performing these tasks in buildings 1 and 12, the coating technicians, blending technicians and their manufacturing assistants are supervised by the same supervisory hierarchy as in dispensing. However, the blending technicians on the liquid line in building 16 have different supervision. They are directly supervised by Penny Decker or Gil Mattice. The direct supervisors in building 12 or 16 give work assignments to the blending employees in their respective buildings. Decker and Mattice report to superintendent Rodney LeMaster, LeMaster is the superintendent of packaging production in building 16. LeMaster reports to Tim Davis, production manager for packaging, Davis reports to plant manager Walter.

Tableting and Encapsulating

In the next stage of the production process, the blended ingredients are turned into capsules or tablets. This task is performed by 68 press operators (65 tableting and 3 encapsulating), who are primarily located on the upper level of building 12A. Two tablet presses and the employees who operate them are located in building 12.¹⁶ Each press is contained in its own room or suite. During this process, the operators also wear the same protective equipment as is worn by blending and dispensing technicians.

The three encapsulating press operators, who are classified as 1, 2, 3 or team leader, use presses to form the blended ingredients into a capsule. In this process, empty capsules and the blended ingredients are loaded into the press. The capsules are opened by the machine, filled and then closed. The capsules are then discharged into a container. The 65 tableting press operators, who are classified as 1, 2, 3 or team leader, use a direct tablet press to compress the powder into a tablet. To create the proper formulation for the tablet, the operator has to set up the press. The operator may either manually set up the press or, on the

¹⁴ The record revealed that there are only two coating technicians currently employed and one is classified as a coating technician 2 and the other as a team leader.

¹⁵ Bead coating does not occur on a daily basis in building 1. Thus, when not in building 1 the technicians work in the blending area in building 12.

¹⁶ It is unclear from the record the total number of presses that are located on the upper level of building 12A, where most of the operators work.

newer machines, set it up automatically by selecting the appropriate instructions. The operator loads the blended ingredients into the press, the ingredients are compressed into a tablet, and a logo or another identifying mark is imprinted on the tablet. The tablet is then discharged into a large container.

Both encapsulating and tableting operators perform a series of quality verification checks and document the process in the batch record. The operators also periodically take a number of the pills out of production to be tested by the lab to ensure their quality. Periodically during the product run, another operator enters the suite and checks that the product is formed properly. Once the product is run through the press, the press is disassembled by the operators and cleaned. The press is cleaned to ensure that the next pills formed are not contaminated by the ingredients used in the prior production. The press is reassembled by a machine set-up technician. There are seven set-up technicians, who are organized in the same department as the press operators with the same supervision. The set-up technicians work on the machines, which are located in the compression suites. The spare parts they need for the machines are located in storage areas in buildings 1 and 12.¹⁷

The manufacturing assistants aid in the production process. They bring the blended product from the warehouse and place it outside the appropriate compression suite. The operators also call the assistants to move the products to storage in the 12B warehouse.

The press operators, manufacturing assistants and set-up technicians are directly supervised and given work assignments by supervisors Scott Cobstill, Greg Stock, Chris Hutton and Brian Stranahan.¹⁸ These direct supervisors each report to Barry Elliot, a superintendent. Elliot is the superintendent of tableting, encapsulating, and film coating. Elliot reports to Mike Mullins, production manager. Mullins reports to plant manager Walter.

Packaging

¹⁷ The record also disclosed that the set-up technicians wear a blue uniform, the same color as employees in the warehouse. The record was silent as to the type of uniform, if any, other employees wear.

In the packaging department, there are approximately 179 packaging line operators. They and the manufacturing assistants perform the final step in the production process. The packaging line operators, who are classified as 1, 2, 3 or team leader, package the product in either building 12C or 16. In 12C there are two bottling lines as well as a blister packaging line. In building 16 there is a liquid line and three solid-dose packaging lines. While the packaging employees generally work in their respective buildings, approximately two times a month a number of 12C employees will assist the packaging employees in building 16.

On the 12C and 16 bottling lines, the operator is issued all the items needed to package the product: tablets, labels, caps, bottles, cotton to prevent damage during shipping, a leaflet, cases, and case sealing tape. Once the bottling line starts, the operator performs a series of validation checks. The checks ensure that the bottled product meets the Employer's and the Federal Drug Administration's ("FDA") standards. The operator will check the bottle's seal strength, label integrity, lot code, and number per case. The checks are verified in the batch record. The building 12C and 16 packaging operators perform the same duties. In both 12C and 16, there are between three to five packaging employees, operators and assistants, that work in each bottling room. While performing these tasks, the packaging employees wear protective equipment similar to that of the technicians and press operators.

The 12C operator on the blister line performs similar tasks to those performed by the other operators. The operator conducts similar validation checks only on a different type of machine. This machine packages the tablets in plastic sheets that have a foil backing. The blister cartons are stacked up on a pallet, shrink wrapped and put into storage in building 12C.

In building 12C, once the packaged products are released by quality assurance, they are brought to the 12B warehouse area, loaded on trucks by the material coordinators and transported to the distribution center. This process is repeated in building 16, except the product is not brought to the 12B area. Moreover, in building 16, a certain amount of the packaged product is loaded onto trucks for direct distribution to the customer. The distribution technicians unload the products that have been delivered to the distribution center

¹⁸ The record also revealed that the team leaders in this department also assign work when the supervisors are not present. However, the record did not reveal the frequency of such assignments and neither of the parties contend that

by truck and place the products in the appropriate area depending on the drugs' classification, which is designated by the Drug Enforcement Agency ("DEA").

The packaging employees in buildings 12C and 16 are supervised by different direct and secondary supervisors. The packaging employees in building 16 have the same supervision as the blending operators that work in that building. The packaging employees in area 12C receive assignments and are directly supervised by supervisors Steve Cole, Hector Henao and Frank Molinario, who report to a superintendent, Scott Dickinson. Dickinson is the superintendent of packaging production in 12C. Dickinson reports to Tim Davis, the production manager for packaging, as does packaging superintendent for building 16, Rodney LeMaster. Davis reports to plant manager Walter.

High Volume Operations

The parties also stipulated to include in any unit found appropriate herein, the job classification of high volume plant technician. The record disclosed that there are four to eight technicians who are currently being trained on how to use equipment that will dispense, blend and tablet hydrocodone with acetaminophen. As there is only one primary product made on this equipment, the FDA has less stringent cleaning requirements. This operation, when it is functional, will be in building 12E, which is adjacent to and connected to building 12D, a warehouse. 12D is adjacent to and connected to building 12C. The product will be packaged in the high volume package area in building 12C. This high volume process is expected to be operational by the end of the calendar year.¹⁹

Inspectors

The inspectors, who the parties have stipulated should be included in any unit found appropriate herein, also perform tasks vital to the production process. The nine inspectors are considered part of the blending group. The inspectors have the same supervision as the blending employees that work in building 12. The inspectors perform the majority of their work in their office which is located on the upper level of 12A. They are responsible for visually inspecting the product, as required by the FDA. The inspectors visually review entire batches for defects, such as chips, cracks or color differences. If a product is defective,

team leaders are Section 2(11) supervisors. The record was silent as to whether other team leaders assign work.

¹⁹ The record was silent as to who will be supervising the high volume operation.

they remove it from the process and put into waste. The inspectors document their inspections. Similar visual inspections and corresponding documentation is also completed by packaging operators as they operate their machines.

The inspectors also examine the final packaged product. The product is brought to their inspection office and examined for any foreign tablets that may have been mixed in with the product. At times, the inspectors are augmented by additional employees who may work in packaging, blending or other areas of the plant. These employees temporarily work as inspectors and are trained in the standard operating procedures (“SOPs”) for inspection. The inspectors are also responsible for certain bulk packing for outside customers. The inspectors pack the product in boxes that are a slightly larger than a shoe box. The boxes are loaded on to pallets and sent to the customers who repackage them for retail sale. The inspectors spend approximately 10 percent of their time bulk packaging.

Maintenance

The maintenance mechanics, who are in disputed job classifications, are responsible for fixing and maintaining the equipment used in the manufacturing process. The 26 maintenance mechanics are classified as, I, II, III or IV,²⁰ depending on seniority and skill. The mechanics are responsible for repairing broken equipment, and for modifications, planned maintenance or installation of equipment. They are divided into two groups, one works on production equipment and the other on packaging equipment. The mechanics assigned to production equipment primarily work in building 12A and building 1. In building 1 there is a shop with fabricating tools and spare parts. The mechanics assigned to work on the packaging equipment primarily work in building 16. There is a maintenance shop in building 16, which contains tools and spare parts.²¹ Certain mechanics who perform fabrication and major repairs work on both production and packaging equipment.

²⁰ The maintenance mechanics classifications are the only employee classifications set forth in Roman numerals.

²¹ The record does not establish where or whether there is a maintenance shop in building 12A, although it is clear that maintenance mechanics perform work in that building.

The mechanics are given repair assignments by their supervisors Cory Zipperl and Brett Walters.²² Zipperl directly supervises the mechanics responsible for production and Walters directly supervises the mechanics responsible for packaging. They both report to maintenance superintendent Darren Hanway.²³ Hanway reports to engineering and maintenance manager Chad Dykes. Dykes reports to plant manager Walter.

Housekeeping

There are 12 housekeeping employees, in the disputed job classifications of janitor and lead custodian, who are responsible for cleaning the common areas and offices at the Hobart campus.²⁴ They also perform some grounds keeping. In performing their job duties, they use auto floor scrubbers, buffers and snowplows. The nine janitors and three lead custodians also perform their duties in accordance with current good manufacturing practices as defined by the FDA. They are not allowed to clean the production areas, which are cleaned by the operators and technicians as required by FDA standards. The housekeeping employees are assigned to clean a specific building or buildings on the campus. The employees that are assigned to clean building 16 report to that building. The remaining employees report to building 12A. The record disclosed that when cleaning the common areas, the housekeeping employees may ask a production employee if equipment or materials could be moved so they can clean.²⁵ The housekeeping employees are supervised by the housekeeping supervisor Dennis Dorosky, who has an office located on the lower level of building 12A. Dorosky reports to Melanie Amer, facilities' supervisor. Amer reports to Chad Dykes, engineering and maintenance manager.²⁶

²² The record disclosed that operators and technicians directly contact the maintenance supervisor and alert him that a repair is needed.

²³ The record revealed that Hanway was acting as a supervisor in tableting, encapsulating and film coating for a short period of time. However, the record did not disclose the circumstances under which this occurred, when it occurred, or whether he was also the maintenance superintendent at that time.

²⁴ The common areas consist of the cafeteria, break rooms, hallways and bathrooms.

²⁵ The record is unclear as to whether the moving of equipment and materials for this purpose is done by housekeeping employees.

²⁶ In housekeeping, on second and third shift there is no supervisor on duty, therefore, the leads provide guidance and direction to the other custodians. Building maintenance or repair is performed by the same outside contractor that provides the Employer's security services.

Process Trainer and Equipment Manual Developer

There are three process trainers.²⁷ One is assigned to tableting, another to blending and the third to packaging.²⁸ The trainers are experts in their assigned areas and are responsible for developing comprehensive programs to train operators.²⁹ The training program includes initial training on the equipment and the additional training an operator needs in order to advance to a higher job classification. The trainers maintain a “grid” on each operator, which documents the equipment the operator needs to be trained on and when that training is completed. The trainers do not engage in the actual training of the operators, which is performed by experienced operators. The trainers also monitor that the supervisors in their area have read the SOPs.³⁰ The trainers are also involved in the development of operating manuals and determine whether clarifications or updates are needed to the manuals. In performing these duties, the trainers’ written job description states that they are supervised by Human Resources. However, the record further disclosed that the trainers are also given direction by the superintendent in their assigned area.³¹

There are also three equipment manual developers; one is assigned to blending, another to compression and the last to packaging.³² The developers are responsible for writing operating manuals for the equipment in their assigned areas.³³ They spend the majority of their time using a computer software program to write the manual. They obtain the information needed for the manual by examining a piece of equipment and discussing it with operators, technicians and maintenance mechanics. The manual is

²⁷ As explained more fully below, the process trainers will be permitted to vote in the election directed herein subject to challenge by the parties.

²⁸ The record was silent as to the exact hours the trainers work, but it appears from the record that they work on first shift, Monday through Friday.

²⁹ The trainers must have extensive knowledge about their assigned area, but the educational requirements for the position only require a high school education. The record disclosed that they are involved in training operators but, since the record does not address the training of the technicians; it is unclear whether their training is exclusive to operators.

³⁰ Human Recourses is ultimately responsibility for the ensuring that supervisors read and acknowledge the SOPs.

³¹ Therefore the trainer assigned to handling 12C packaging is given direction by superintendent Dickinson. The trainer assigned to packaging in building 16 is given direction by superintendent LeMaster. The trainer assigned to production is given direction by either superintendent Elliot or Udicious.

³² As explained more fully below, the manual developers will be permitted to vote in the election directed herein subject to challenge by the parties.

³³ Each manual has four sections; set-up, operation, clean and troubleshooting.

intended to aid operators and technicians in both learning to use, and in continuing to use, the equipment.

The developers work closely with the trainers to determine whether the manual is effective. The trainers test the manual by having operators new to a machine run it by following the manual. Each developer reports to the superintendent in his or her assigned area.³⁴

Warehouse

Throughout the production process, raw materials and products in various stages of completion are stored in the warehouse areas. There are warehouse areas located in buildings 12B and 16 on the Hobart campus, and at the River Street facility in Oneonta, New York, which is about 30 miles from the campus.³⁵ A total of 13 warehouse employees, in the job classifications of material coordinator 1, 2 and senior, work in these areas and are responsible for storing materials. The coordinators at each building record the receipt and movement of any materials by docketing them in a computer inventory system. The material coordinators in buildings 12B and 16 receive and store materials based on their DEA classifications. Class 2 materials must be placed in a vault, class 3 materials must be placed in a cage and class 4 materials are placed in general storage. The coordinators at the River Street location only handle general storage material. The coordinators are required to have a forklift license because they use a forklift to store materials. They also use a commercial truck, which requires a commercial driver's license.

The River Street location only stores materials used to package the product. The two material coordinators stationed at this site load these materials onto trucks. A coordinator transports the packaging materials by truck to either the 12B loading docks or to the building 16 storage area at the Hobart campus.

The material coordinators in the 12B area are also responsible for materials that are returned to storage during the production process. Thus, after each stage of the process, dispensing, blending and compression, the product may be returned to storage until it is needed for the next stage of production. The products in various stages of completion are generally taken by manufacturing assistants or, at times, by operators or technicians to and from and returned to a staging area located next to the 12B warehouse. The

³⁴ The record is silent as to the specific hours the developers work, but it appears from the record that they work on first shift, Monday through Friday.

³⁵ There is also some storage in building 1, but the record does not establish what is stored in this area.

materials returned to the warehouse are stored according to their DEA classification. The coordinators use a forklift to transport materials ready to be packaged to the 12C area.

In the building 16 warehouse area, the material coordinators are responsible for products that need to be packaged and for finished products. The building 16 coordinators receive tablets or capsules from the 12B warehouse that are to be packaged in building 16. Once it is received, the coordinators will either store these products based on their DEA classification or send them directly to the packaging lines. Once the product is packaged and released by quality assurance, much of it is loaded onto trucks by the material coordinators, who transport it to the distribution center. The packaged products remaining in building 16 are loaded onto common carrier trucks by the material coordinators for direct customer distribution.

All the material coordinators are directly supervised by Karl Ogborn, the warehouse supervisor.³⁶ Ogbon has an office cubical in the 12B warehouse area. Oborn reports to Aaron Nickolette, materials manager, who reports to plant manager Walter.

Distribution Center

Once the product is finished, most of it is stored in the distribution center. The distribution center is adjacent to building 12C with which it shares a common wall. The distribution technicians, a disputed job classification, receive the finished products from buildings 12B and 16. The distribution technicians unload and store the product by using a forklift. They also record the material in the computer inventory system. The product is again stored based on its DEA classification.³⁷ The technicians also load common carrier trucks with the finished products for distribution.³⁸

Also stationed at the distribution center is the driver. The driver is responsible for picking up supplies needed to manufacture the finished product. In so doing, the driver often drives a tractor trailer directly from his home to the supplier. Generally, the driver is able to pick up the supplies and bring them

³⁶ Ugborn also supervises the shipping clerk, who is not at issue in this proceeding.

³⁷ The distribution center contains a vault that is approximately 15,000 square feet, a cage that is approximately 20,000 square feet and general storage. Due to security requirements maintained by the DEA, access to the center is limited to the plant manager, the center employees, maintenance and materials manager Nickolette. It is accessible only by a double-card security system.

³⁸ The trucks transporting the finished product are from either FedEx or DHL.

back to the Hobart facility in one day.³⁹ The driver takes the supplies to the warehouse areas in building 12B, 16 or River Street, where they are unloaded by the material coordinators. The driver spends about 90 percent of his time operating the tractor trailer.⁴⁰ The driver has a commercial driver's license, class A, which is required to drive the tractor trailer. When he is not engaged as a driver, he works at the distribution center as a distribution technician.

The distribution technicians and driver are directly supervised by supervisors Joe Palmatier, Tom Martin and Rose Adams. All three of these supervisors report to the distribution manager, George Hall. Hall reports to Nickolette, materials manager. Nickolette reports to the plant manager, James A. Walter.

Wages, Benefits and General Working Conditions

Hourly employees' wages are uniform based on their job grade. Each job classification is assigned a wage grade from 1 to 11. The wages range from \$8.38 in grade 11 to \$21.12 in grade 1. The process trainer, maintenance mechanics and team leaders are among the highest paid employees. However, the distinctions in the wages among the other production employee classifications is not significant to my decision herein.⁴¹ In each grade, the amount increases with longevity of employment. The hourly employees are paid on a weekly basis. The hourly employees receive an annual uniform raise depending on their job classification, which is not influenced by the annual performance review conducted by their immediate supervisor.

All of the hourly employees, both those petitioned-for and in dispute are subject to the policies contained in an employee handbook. This includes a progressive disciplinary policy. Under this policy, an

³⁹ The driver typically picks up supplies in Pennsylvania and occasionally Maryland.

⁴⁰ While working as a driver, the number of hours he may drive are governed by the regulations pertaining to his commercial driver's license.

⁴¹ In grade 1, the wages start at \$21.12 and include the process trainer and maintenance mechanic IV. In grade 2, the wages start at \$17.17 and include maintenance mechanic III. In grade 3 the wages start at \$15.70 and include the maintenance mechanic II and the team leaders for blending, dispensing, tableting and encapsulating. In grade 4, the wages start at \$14.40 and include dispensing technician 2, maintenance mechanic I, high volume production technicians, team leader packaging and materials coordinator senior. In grade 5, the wages start at \$13.38 and include the blending technician 3, team leader coating, distribution technician, encapsulating press operator 3, machine set-up technician, materials coordinator 2, manual developer, tablet press operator 3. In grade 6, the wages start at \$12.86 and include blending technician 2, coating technician 2, dispensing technician 1, encapsulating press operator 2, tablet press operator 2 and materials coordinator1. In grade 7, the wages start at \$12.23 and include lead custodian and packaging line operator 3. In grade 8, the wages start at \$10.83 and include blending technician 1, coating technician 1, encapsulation press operator 1, inspector, packaging line operator 2, tablet press operator 1 and ovens screening technician. In grade 9, the wages start at \$9.80 and include the manufacturing assistants. In grade 10, the wages start at \$9.40 and include the packaging line operator 1. In grade 11, the wages start at \$8.38 and include the janitor. The record did not disclose the wage grade assigned to the driver job classification.

employee's immediate supervisor may initiate discipline, but it is reviewed by Human Resources for uniformity within the facility and corporate wide. All hourly employees also receive the same benefits.⁴²

All hourly employees work one of three schedules (8, 10 or 12-hour shifts). The first schedule is worked on three eight-hour shifts from Monday to Friday. The first shift is from 8:00 a.m. to 4:30 p.m., the second shift is from 4:00 p.m. to 12:30 a.m., and third shift is from 12:00 a.m. to 8:30 a.m. The following employees work on three eight-hour shifts from Monday to Friday: dispensing technicians, dispensing assistants, blending technicians, coating technicians, blending assistants, inspectors, packaging operators in building 16, packaging assistants in building 16, material coordinators, housekeeping, certain tablet and encapsulating press operators and their assistants and certain maintenance mechanics. The second schedule is a twelve-hour shift on four consecutive days. The twelve-hour shifts are from 6:00 a.m. to 6:00 p.m. or from 6:00 p.m. to 6:00 a.m. Packaging operators in building 12C and their assistants, certain maintenance mechanics, and certain tablet and encapsulating press operators and their assistants, work this schedule.⁴³ A third schedule is ten-hour shifts on four consecutive days. The distribution technicians and certain maintenance mechanics work this schedule.⁴⁴ All hourly employees are subject to the same overtime policies.

The entry level job requirements in dispensing, blending, compression, housekeeping and packaging are the same.⁴⁵ All the applicants must pass a physical exam, drug test and have no criminal record. The applicants must have a high school diploma or equivalent with basic knowledge of arithmetic, spelling, English and grammar. They must also have previously worked somewhere for three months with supervision. The requirements for trainer, manual developer and maintenance mechanic are more stringent. While the basic educational requirements are the same, each of these job classifications, trainer and

⁴² They all receive the following benefits: 401K retirement benefits, bonus program, severance pay, reporting pay, call back pay, bereavement leave, jury duty, military leave, Family Medical Leave Act leave, short term disability, workers compensation, paid holidays and vacation, tuition reimbursement, stock purchase program, computer purchase program, merit scholarship program and employee assistance program. These benefits are administered by Human Resources.

⁴³ The record discloses that once the high volume operation is operational the operators will work this schedule.

⁴⁴ The record is silent as to the exact hours the trainers work, but it appears from the record that they work during the day, Monday through Friday.

developer, requires experience and knowledge in their area of expertise, be it packaging, production or equipment maintenance. Additionally, applicants for the material coordinator position must have a CDL license. Human Resources screens, interviews and hires the applicants, except for maintenance mechanics. For maintenance mechanics, the maintenance supervisors often interview candidates to determine whether they have the necessary expertise. Once hired, all the hourly employees attend the same week-long orientation.⁴⁶ They also have access to job openings that are posted throughout the facility.⁴⁷

All the hourly employees have access to the common areas, including the main cafeteria located in the lower level of building 12A. Additionally, there is a break room located in building 12C, which is primarily used by 12C packaging employees. Similarly, the building 12 employees park in the main parking lot located next to their building. The employees in building 16, packaging, blending and warehouse, have a small break room with vending machines. They also can use the main cafeteria in building 12. There is a small parking lot located next to building 16. There is another small break room in building 1 and in the distribution center. There is a parking lot located next to each of these buildings.⁴⁸ All hourly employees receive the same amount of time for breaks and lunch, depending on the number of hours they work in a day.

All hourly employees use the same clock-in method. Their identification badges, which open secured areas, also record their hours of work.⁴⁹ The employees that work in the building 12 complex have a main entrance where they clock in.⁵⁰ The employees in building 16 clock-in at building 16's main entrance. The distribution technicians use their badge to clock in at the distribution center. The only hourly employees granted security access to the distribution center are the distribution technicians. The material coordinators

⁴⁵ The record discloses that some employees currently working in production and in the warehouse may have started by working in packaging. Some of the employees currently working as distribution technicians may have started in production. However, the record does not reveal the frequency or number of such transfers.

⁴⁶ Once on the job, the employees also attend department shift meetings and a yearly meeting regarding a performance bonus. At times, maintenance employees may attend a department shift meeting to inform employees about a piece of equipment. The employees can also attend a yearly holiday party and picnic.

⁴⁷ Each hourly employee is subject to the same requirements to advance to the next level in their job classification and must fill out an application to Human Resources in order to do so. In order to advance to the next level, there must be a job opening and the employee must have worked in his or her current job classification for six months and not be at the written warning stage of discipline.

⁴⁸ The record does not establish whether there is a break room located at the River Street facility.

⁴⁹ It was unclear from the record whether the badges identify the employee's department. There was testimony that the badge only has the name of the Company and other testimony that it states the employee's production group on it.

⁵⁰ There are employees that report to building 12, who are occasionally assigned to work in building 1; they clock-in by using their badges in building 12.

assigned to the River Street facility use their badge to clock in at that facility. The employees all have access to the common areas of the River Road facility. Beyond that, due to security and safety reasons, employees are generally granted access only to their work areas.⁵¹

ANALYSIS

In determining unit appropriateness, the Board need not determine the *only* appropriate unit, the *broadest* unit, or the *most* appropriate unit; the Act requires only that the unit be appropriate. See, e.g., Boeing Co., 337 NLRB 152,153 (2001); Home Depot USA, Inc., 331 NLRB 1289, 1290 (2000); Overnite Transportation Co., 322 NLRB 723 (1996); Black & Decker Mfg. Co., 147 NLRB 825, 828 (1964). If the petitioned-for unit is appropriate, then any inquiry into other appropriate units ends. Thus, if the Petitioner seeks a unit that is found to be appropriate, the employer's alternative unit proposals need not be considered. P.J. Dick Contracting, 290 NLRB 150 (1988). In making this determination, the Board examines whether a community of interest exists that sets the petitioned-for employees apart from other employees. See, e.g., Boeing Co., 337 NLRB at 153. The Board, therefore, examines factors such as wages; hours of work; employment benefits; nature of supervision; differences in qualifications, training and skills; differences in job functions and amount of time spent away from the plant situs; interchange or contact with other employees; integration with the work functions of other employees; and history of bargaining. See Home Depot USA, supra; Boeing Co., supra; Kalamazoo Paper Box Corp., 136 NLRB 134, 137 (1962).

I conclude that the employees the Petitioner seeks in its production unit in Case 3-RC-11640, but with the additional inclusion of the packaging employees, constitutes an appropriate unit.⁵² The petitioned-for job classifications do not share a sufficient community of interest with all other hourly employees, as to require the inclusion of other employees in the production unit. Similarly, I conclude that in the warehouse

⁵¹ As the maintenance mechanics work throughout the facility, they have been given greater access rights. Also, employees that have successfully bid on other jobs in a different area do not have their initial access rights taken away, so that they can work overtime at their prior job.

⁵² The Petitioner has stated that it is willing to proceed to election in any unit found appropriate herein.

unit in Case 3-RC-11641, the petitioned-for employees, but with the additional inclusion of the distribution technicians and driver, constitutes an appropriate unit. The warehouse employees, as more fully explained below, share a community of interest that is separate and distinct from that of the employees in the petitioned-for production unit.

Production Unit

The production unit sought by the Petitioner, but with the additional inclusion of the packaging employees, is an appropriate unit as the employees sought possess a community of interest distinct from all other hourly employees. As more fully explained below, the employees to be included in the petitioned-for unit, as opposed to the hourly employees that are to be excluded from the unit, perform job duties that are functionally integral and necessary to the actual manufacture of product, use similar skills, common supervision, have contact and some interchange and the similar qualifications. The record also discloses that the packaging employees share a strong community of interest with the petitioned-for employees and are therefore appropriate to include in the unit. See e.g., Avon Products, 250 NLRB 1479 (1980). However, the maintenance and housekeeping employees do not share a sufficient community of interest with the petitioned-for employees to warrant their inclusion. Yuengling Brewing Co. of Tampa, 333 NLRB 892 (2001); Lawson Mardon U.S.A., 332 NLRB 1282 (2000); Carl Budding & Co., 328 NLRB 929 (1999).

The packaging employees share a strong community of interest with the petitioned-for production employees. They have similar functions, skills, supervision, working conditions, as well as contact and interchange with the employees sought to be included in the unit. See Avon Products, 250 NLRB at 1489 (Board included packaging employees in the production unit where they had a similar function). The record demonstrates that the Employer's operations are highly integrated. The packaging employees, including packaging operators and packaging manufacturing assistants, perform duties that are an integral part of the production process. In this process, the packaging employees are responsible for processing the product into its finalized form. They do so by bottling or blister packaging the tablets or capsules, a necessary step in the production process.

Certain packaging employees have the same supervision as the employees the Petitioner seeks to include in the production unit. The packaging employees and the blending employees in building 16 have

the same supervision. The packaging employees in building 12C, while having different first- and second-line supervisors, have the same overall supervision, which is provided by packaging manager Davis.⁵³

The packaging employees have skills and functions that are similar to the employees in the petitioned-for unit. The packaging employees, like the inspectors, examine the products and record their observations. Both the packaging employees and the inspectors package the products for distribution. Like the other production employees, the packaging employees also document their actions as part of the manufacturing process. The packaging operators, similar to the other production employees in the operator and technician classifications, use a machine designed for the manufacture of pharmaceuticals to perform their job.

There is interchange and contact among the packaging employees and the employees in the petitioned-for production unit. There is temporary interchange involving the packaging employees with the inspectors and liquid blenders. The packaging employees have acted as inspectors. In so doing, the packaging employees work in the inspection area located in building 12A. The blending operators in building 16 also work on the packaging line. Whenever the blending line is down, which is at least once or twice a month, the blending operators work on the packaging line in building 16. The record also disclosed that packaging employees have permanently transferred to positions in dispensing, blending and compression. The 12C packaging employees also have contact with the other packaging employees and blenders, when they work on the building 16 packaging line several times a month. Further, the packaging employees in 12C share common areas with the other employees in the building 12 complex included in the petitioned-for production unit. The building 16 packaging employees have similar contact with the petitioned-for production employees in their building.

Finally, the packaging employees also share the same general working conditions, and work in the same locations as the employees sought in the petition. They also wear protective equipment in performing their job, as do many of the other production employees in the unit. They work the same hours as the other production employees and follow the same clock-in procedures. They also have the same benefits and work

⁵³ The other job classifications the Petitioner seeks to include in the unit share only third-line supervision. Thus, the dispensing and blending employees only have a third-line supervision in common with the compression employees in

under the same Employer policies. They are paid weekly within the same wage grades with similar pay rates as the petitioned-for employees. Based on the record, the packaging employees share a strong community of interest with the petitioned-for employees and I therefore shall include them in the unit.

The housekeeping employees, including janitors and custodians, do not share a sufficient community of interest with the employees to require their inclusion in the production unit. Housekeeping employees do not have similar skills, functions, work areas, supervision, interchange or contact with the production employees to warrant their inclusion in the unit.

The housekeeping employees' duties are not functionally integrated with the production process. In fact, they are specifically denied access to the production areas. While their work must be performed in accordance with good manufacturing practices, as is the work performed by the employees to be included in the unit, their cleaning is not integral to the production process. Rather, housekeeping employees are responsible for cleaning the cafeteria, break rooms, offices, hallways and bathrooms as well as performing some grounds maintenance. The housekeeping employees are part of the maintenance department and do not share any common supervision with the employees to be included in the production unit. The housekeeping employees, unlike the employees to be included in the unit, do not use production equipment in performing their jobs. Rather, the janitors and custodians use auto floor scrubbers, buffers and snowplows. There is no evidence of any interchange among housekeeping and the employees included in the unit. Contact between housekeeping and the production employees is limited to instances when housekeeping employees inquire of production employees as to when certain materials will be moved so they can clean an area.

Housekeeping employees do not perform production work, and thus, do not wear the extensive protection equipment worn by the majority of the petitioned-for production employees. They are also not required to maintain the same government-mandated documentation of their actions required of production employees. Housekeeping employees earn wages that are significantly lower than the employees included in the unit. Accordingly, I shall exclude the housekeeping employees from the production unit, as they do not share a sufficient community of interest with employees to be included in the unit. See Carl Budding & Co., 328 NLRB 929 (1999) (excluding sanitation employees who performed janitorial duties from either an

existing production unit or a maintenance unit, where they had little contact with either unit, performed distinct duties, used different skills and equipment and earned lower wages and worked different hours). Cf. Cooper Mattress, 225 NLRB 200 (1976) (including a janitor in the production and maintenance unit where he was classified as part of the maintenance department, but also, unlike the instant case, spent 50 percent of his time performing work in the production areas and had the same supervision as unit employees).

I shall permit the three process trainers and the three equipment manual developers to vote under challenge in the production unit election, as there is no basis in the record for me to determine whether they share a sufficient community of interest to warrant their inclusion in the petitioned-for production unit. The record lacks evidence as to the degree of contact each of these classifications has with petitioned-for employees, and their physical location in the Employer's complex. Accordingly, there is little information about their general working conditions. There is no evidence as to the percentage of time they spend in production areas. There is insufficient evidence regarding the number of new hires and how often the trainer is engaged in training them. The record is unclear as to whether an area superintendent or Human Resources supervises the trainer classification. There is also insufficient evidence to determine how essential the manual and training functions are to manufacturing the product. In the absence of a factual basis in the record to determine whether these classifications should be included in the production unit, I shall permit the process trainers and manual equipment developers to vote subject to challenge by the parties in the election directed herein.

The maintenance employees do not have such a substantial community of interest as to mandate their inclusion in a production unit. They have different supervision, skills, functions, and lack interchange with the production employees. The maintenance employees are organized in a separate department and have separate supervision. They are not supervised by any of the production supervisors. They do not perform any production work.

The maintenance employees are more highly skilled than production employees, which is reflected in their wages. They occupy the highest wage grades, similar to the most senior operators, who are the highest paid production employees. Significantly, 12 maintenance mechanics hold pay grade 1 or 2, a higher level than any employee to be included in the production unit. While the maintenance employees have the

same educational requirements as the production employees, unlike the production employees, applicants for a maintenance position must possess job-related knowledge and experience. These job requirements are reflected in the fact the record failed to reveal any transfers from production to maintenance. There is no evidence of interchange between maintenance and the production employees. There is only limited contact in that the production employees may alert the mechanics that a machine needs repairs and may attend meetings in which repairs are announced. The maintenance employees are the only group of employees that work all three schedules (8-, 10- or 12-hour shifts) available at the facility. They also perform much of their work in a shop apart from other employees.

In Lawson Mardon U.S.A., 332 NLRB 1282 (2000), much like here, maintenance employees were excluded from a production unit based on a lack of community of interest. The maintenance employees in Lawson lacked common supervision, had limited contact with production employees, were more highly paid, had greater skills, and there was a limited number of transfers of production employees into maintenance. See also, Yuengling Brewing Co. of Tampa, 333 NLRB 892 (2001) (finding a separate maintenance unit appropriate where the maintenance employees had greater skills, separate supervision, and there was little interchange or contact with production employees).

The Board has included maintenance employees in a production unit where there was greater contact and interchange between the two groups than is present in the instant case. For example, in TDK Ferrites Corp., 342 NLRB No. 81 (2004), the maintenance employees spent the majority of their time working alongside the production employees. One half of the maintenance employees spent a significant amount of their work week operating production equipment. The production technicians filled in for maintenance employees and performed maintenance tasks. The production and maintenance employees also had some common supervision. Similarly, in Buckhorn, Inc., 343 NLRB No. 31 (2004), the maintenance employees regularly performed production work, there were a number of permanent transfers from production to maintenance, and there was a degree of common supervision.

The record, as discussed above, establishes that the maintenance employees do not have such a close association with the production employees and in fact have a sufficiently distinct and separate community of interest such that their inclusion in the production unit is not warranted. Therefore, I shall exclude the

maintenance employees from the production unit found appropriate herein. There are approximately 351 employees in the production bargaining unit found appropriate, herein.⁵⁴ There are three process trainers and three equipment manual developers who will be permitted to vote subject to challenge.

Accordingly, I find that that following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time production employees, including dispensing technician 1, dispensing technician 2, blending technician 1, blending technician 2, blending technician 3, coating technician 1, coating technician 2, encapsulating press operator 1, encapsulating press operator 2, encapsulating press operator 3, tablet press operator 1, tablet press operator 2, tablet press operator 3, manufacturing assistant, inspector, high volume plant technician, ovens screening technician, team leader (coating), team leader (blending), team leader (dispensing), team leader (tableting and encapsulating), team leader (packaging); machine setup technician, packaging line operator 1, packaging line operator 2, and packaging line operator 3; excluding the warehouse employees, maintenance mechanic I, maintenance mechanic II, maintenance mechanic III and maintenance mechanic IV, janitor, custodian, material coordinator 1, material coordinator 2, material coordinator senior, distribution technician, driver, office clerical employees, and all managerial employees, professional employees, guards and supervisors as defined in the Act.

Warehouse Unit

The Petitioner also seeks a separate unit of warehouse employees. As the warehouse employees, specifically the material coordinators, possess a community of interest that is distinct and separate from that of the employees in the production unit, they are appropriately included in a separate unit. However, I find that the distribution technicians and driver share a sufficient community of interest with the material coordinators to warrant their inclusion in the warehouse unit.

⁵⁴ Because the units in which an election is directed herein is significantly larger than the units petitioned for, I shall allow the Petitioner until the close of business **October 17, 2005**, to submit to the Albany Resident office of Region 3 of the National Labor Relations Board, additional cards necessary to support a 30 percent showing of interest in the larger unit, unless a request for review by the Petitioner challenging my unit findings is timely filed, in which event the submission of the additional showing of interest will be due, if appropriate, 10 days from the date of the Board's action on the request for review. Should the Petitioner not wish to proceed to an election in the broader unit, it will be permitted, upon request, to withdraw its petition without prejudice.

The material coordinators have a community of interest that is distinct and separate from the production unit. The material coordinators have different supervision from that of the production employees. Their jobs are not sufficiently integrated with those of employees directly involved in the manufacturing of the product to require, as the Employer urges, that they be included in the production unit. Rather, the material coordinator's function is to receive, record and move materials in the facility. They also load and deliver the products either to other areas of the facility, or for direct distribution to customers. In performing these tasks, the material coordinators use different skills than the employees in the production unit. The material coordinators are required to possess a forklift license for moving materials. The material coordinators do not operate production equipment nor manufacture the products. They primarily work in a vault or cage and not in the production areas. Unlike the production employees, they do not wear extensive protective equipment in performing their jobs. While the material coordinators, when moving the materials, do have some contact with the employees in the production unit, such contact is insufficient to overcome their lack of common supervision and functional integration with the production employees. The material coordinators are physically separated from, and have little transfer or interchange with, the production employees. While the record disclosed that some material coordinators previously worked in packaging, there was no evidence as to the number of such transfers.

Similarly, in Ives Business Forms, Inc., 263 NLRB 286 (1982), the Board found a separate warehouse unit appropriate. In Ives, as in the instant case, the warehouse employees, including truck drivers, performed separate and distinct functions and had skills different from those of the production employees. They loaded trucks, transported materials and stored materials. Id. at 288. Here, as in Ives, there were few instances of temporary or permanent transfers. Further, contact occurred only when the warehousemen moved materials between the employer's departments. Their work areas were also separated from the production employees. Thus here, as in Ives, a separate warehouse unit is appropriate. See also, Stroehmann, 252 NLRB 988 (1980)(finding a warehouse unit appropriate where they were separately supervised, used skills that greatly differed from the other employees, there was no evidence of on the job contact or interchange).

However, I also conclude that the distribution technicians share a sufficient community of interest with the material coordinators to warrant their inclusion in the warehouse unit. The distribution technicians work closely with, and perform duties that are functionally integrated with, the work performed by the material coordinators. The material coordinators load trucks and transport the finished material to the distribution center. At the distribution center, the technicians unload the trucks. They also load the product onto trucks for distribution. Similarly, the material coordinators assigned to building 16 also load trucks for distribution. Both coordinators and technicians store the products according to their DEA classifications. They both move the materials by forklift, which requires special licenses. They both use the same skills and have the same function. While the distribution technicians are stationed in the distribution center, and the material coordinators are stationed in different buildings, 1, 12, 16 and River Street, they have frequent daily contact with each other in performing their job duties. The record also discloses that material coordinators have transferred to the distribution center.⁵⁵ Material coordinators and distribution technicians work in a warehouse as opposed to the production areas. They have the same general supervision provided by the planning and procurement manager. They are subject to the same Employer policies, receive the same benefits and are paid within the same wage grades as the coordinators. Therefore, as the distribution technicians perform similar functions, use the same skills, have similar work requirements, have daily contact and the same overall supervision as the material coordinators, they share a sufficient community of interest with the material coordinators to warrant their inclusion in the warehouse unit. See generally, Esco Corp., 298 NLRB 837 (1990).

The driver also shares a sufficient community of interest with the material coordinators and distribution technicians as to warrant his inclusion in the unit. The driver is stationed at the distribution center and has the same supervision as the technicians. He drives a truck to transport materials, as do the coordinators. The driver picks up the materials from various suppliers and takes them to the building 12B, 16 and River Street warehouse areas, where the coordinators unload the truck. The majority of these runs are day trips. The materials are then unloaded by the coordinators. The driver also spends ten percent of his time working in the distribution center as a distribution technician. He is subject to the same Employer

⁵⁵ The record does not disclose how many of the coordinators have transferred to the distribution center.

policies and receives the same fringe benefits as the other distribution technicians. Accordingly, as the driver has similar functions, skills and supervision as the coordinators and technicians, as well as daily contact with these employees, I shall include him in the warehouse unit.⁵⁶ See, Ives Business Forms, Inc., *supra*.

As previously noted, the Employer takes the position that all the petitioned-for employees in both units, as well as the other hourly employees, constitute an appropriate unit. The Employer maintains that the Petitioner's units are an arbitrary grouping of employees by department, whose common interests are outweighed by the interests shared by all hourly employees. In support of its contentions, the Employer cites to various cases, including Seaboard Marine, Ltd., 327 NLRB 556 (1999), that address community of interest factors and arbitrary groupings. However, the Board will not find an arbitrary grouping of employees where, as here, the record demonstrates employees in the production unit share a distinct community of interest, as do the employees in the warehouse unit, found appropriate herein. The commonalities shared by the employees in their respective units outweigh any general interests shared by all hourly employees. Contrary to the Employer's contention, the record, as discussed above, demonstrates that

⁵⁶ For the reasons stated above in concluding that the janitor, custodian and maintenance employees do not share a sufficient community of interest with the production employees to warrant their inclusion in that unit, I also conclude that these employees do not share a community of interest with the employees to be included in the warehouse unit. They have separate supervision, work areas, functions, skills, little contact and limited permanent interchange with the employees to be included in the warehouse unit. Further, I conclude that the process trainer and manual developer who shall vote subject to challenge in the production unit, are excluded from the warehouse unit as there was sufficient record evidence to conclude that they have separate supervision, functions, skills, little contact and no interchange with the employees to be included in the warehouse unit.

the employees in their two respective units constitute a homogenous grouping distinct from other hourly employees. See e.g., Pratt & Whitney, 327 NLRB 1213 (1999)(finding that a unit grouping is arbitrary where the petitioned-for employees are not distinguishable from the employees sought to be excluded). Thus, I also conclude that the employees included in the warehouse unit share a community of interest that is separate and distinct from the other hourly employees, as well as the employees included in the production unit. There are approximately 25 employees in the warehouse bargaining unit.⁵⁷

Accordingly, I find that the following employees constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part-time warehouse employees, including material coordinator 1, material coordinator 2, material coordinator senior, distribution technician and driver; excluding production employees, dispensing technician 1, dispensing technician 2, blending technician 1, blending technician 2, blending technician 3, coating technician 1, coating technician 2, encapsulating press operator 1, encapsulating press operator 2, encapsulating press operator 3, tablet press operator 1, tablet press operator 2, tablet press operator 3, manufacturing assistant, inspector, high volume plant technician, ovens screening technician, team leader (coating), team leader (blending), team leader (dispensing), team leader (tableting and encapsulating), team leader (packaging); machine setup technician, packaging line operator 1, packaging line operator 2, and packaging line operator 3, maintenance mechanic I, maintenance mechanic II, maintenance mechanic III and maintenance mechanic IV, janitor, custodian, process trainer, equipment manual developer, office clerical employees, and all managerial employees, professional employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the units found appropriate, as described above, at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

⁵⁷ Because the units in which an election is directed herein is significantly larger than the units petitioned for, I shall allow the Petitioner until the close of business **October 17, 2005**, to submit to the Albany Resident office of Region 3 of the National Labor Relations Board, additional cards necessary to support a 30 percent showing of interest in the larger unit, unless a request for review by the Petitioner challenging my unit findings is timely filed, in which event the submission of the additional showing of interest will be due, if appropriate, 10 days from the date of the Board's action on the request for review. Should the Petitioner not wish to proceed to an election in the broader unit, it will be permitted, upon request, to withdraw its petition without prejudice.

Employees engaged in an economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by:

TEAMSTERS LOCAL #693, INTERNATIONAL BROTHERHOOD OF TEAMSTERS.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 394 U.S. 759 (1969); North Macon Health Care Facility, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 10 days of the date of this Decision 2 copies of an election eligibility lists, containing the full names and addresses of all eligible voters, shall be filed by Mallinckrodt Inc. with the Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such list must be received in the Niagara Center, 130 South Elmwood Avenue, Suite 630, Buffalo, New York 14202 on or before **October 17, 2005**. No extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **October 19, 2005**.

In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board website: www.nlr.gov.

DATED at Buffalo, New York this 5th day of October 2005.

HELEN E. MARSH, Regional Director
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Niagara Center – Suite 630
130 South Elmwood Avenue
Buffalo, New York 14202